

From: Alex Perry
To: 'microsoft.atr(a)usdoj.gov'
Date: 12/6/01 2:30pm
Subject: Class Action comment

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According to a RedHat newsletter article, DOJ is soliciting feedback on the proposed settlement of the class action suit. If this is not the case, feel free to discard this message.

I recommend against accepting the proposed settlement on four grounds:

- (1) It does not compensate the individual consumers who overpaid
- (2) It has a significant detrimental effect on the school system
- (3) There is zero net financial impact to the defending corporation
- (4) It does not discourage the defendant from repeating the act

As a consumer who has involuntarily purchased Microsoft's product, and paid the higher prices for the product after the company has driven a fledgling competitor out of business with a dumping tactic, it would be really nice if the class action settlement could provide me with some benefit (even if tiny) for the cost and hassle incurred. Since I have no children, I will therefore will receive no direct benefit of the provision of Microsoft computers in the school system. However, we must consider the other people with children, and also the potential indirect benefit that I might accrue by being in a country with a better educated workforce. Is there a benefit to the schools ?

Historical data shows that schools, when given a real choice, will purchase Apple's Mac series of computers because they are easier to learn and have a wider range of educational software available. Therefore, the court system is proposing to give these schools something that they would rather not receive; would it not be better to have Microsoft apologize for its price fixing and monopoly position by providing each school with one computer, with the school having the option of choosing the manufacturer and operating system it runs ?

Separate to the benefit to the school budget is the impact on the students. While Mac software is designed to educate and encourage its users to explore the information available, the goal of Microsoft software is to entertain (at home) and support business (at work). The purpose of attending school is to learn, not to use a computer that is optimized for video games and pay-per-listen multimedia. In every way, Microsoft aims to separate its user community from any understanding of how the computer works and is achieving the user's requests. As such, I believe that providing these systems will reduce the technical and scientific capabilities of the school's graduates and ensure they are better able to function as untrained consumers. That certainly doesn't match my employer's staff needs.

If the school uses its small budget to purchase educational software that will make the computers useful for their teaching goals, an additional problem will manifest a few years in the future. When the existing licensing on the Microsoft-based operating system and software expires, the school will be forced to pay a lot of money that is likely to ruin the slim budget available for software. Several groups have argued that, at that time, the school can choose to either not upgrade or to switch to a different operating system (such as Linux). Neither of these options are viable and need to be eliminated from consideration for the following two reasons.

Microsoft's software, as made available at the present, ceases to function correctly after a few years in order to force the upgrade. If the school chooses not to upgrade, the computer will degrade into unusability. Since Microsoft denies independent software vendors (ISVs) the right to sell new software that runs on old Windows versions, the school would also be unable to purchase any software. As an example, I suggest attempting the impossibility of purchasing Microsoft's Visual Basic development environment that runs on a Windows 3.11 based computer. This is analogous to the situation that the schools will find themselves in, in the near future.

As the provider of the computer system, Microsoft can choose the hardware contents very carefully. Many hardware manufacturers,

due to the monopolistic situation, have been forced to sign odd agreements. These provide information needed about their hardware to Microsoft and prohibit that manufacturer from divulging that information to any other organization. In this way, it becomes impossible for the competing operating systems to run correctly on that computer system, even if the hardware manufacturer would like to do so. Therefore, it is trivial for Microsoft, while complying with this settlement, to deliver computers which will never ever be able to run any non-Microsoft operating system.

The school system is actually one of the few market segments in which Microsoft has not yet succeeded in driving out the competition. Conventionally, a settlement requires the defendant to contribute to a cause that would impair its future sales revenue, instead of increasing its future revenue ... and recovering the settlement cost.

Historically, the marketing value of having its computer, or software, or allied product in an educational setting is shown to be sufficiently high that many computer manufacturers have freely donated millions of dollars in kind, without any pretence of being 'forced' to do so by a US court. For example, when I was in university, I was using one of the highest performance computer systems available from IBM, provided by them in order that I would learn to use it and potentially purchase their systems on graduation. Market studies have shown that the return on investment by these generous acts was better than any conventional marketing campaign. Thus, I find it disappointing that the settlement provides the defendant with a large future revenue opportunity and also forces the existing market segment dominating company to operate at a significant disadvantage for the next decade. Is it really the case that the DOJ wishes to encourage Apple to go out of business?

Finally, the publicity campaign I have been observing recently has described the settlement by Microsoft as an act of generosity with no implication in their media statements about any apology or wrongdoing to the general public. This does not seem to set the stage for avoiding a repetition of their error in future.

I am a PhD Electronic Engineer, involved in the development of Concealed Weapon Detection systems for DOJ and DOD components. The monopolistic status of Microsoft has enabled a deterioration in the quality of its products, such that they are unsafe for use in a critical safety product (as a CWD portal must be), yet the monopoly forces their use in the systems we deliver. I am in the process of attempting to migrate the product to Linux, to provide a safe system to our customers, but the tactics documented in the other lawsuits make this difficult. My involvement in the software industry dates back to 1981, so that I have observed the creation, growth and business tactics of Microsoft ... and their impact on other companies.

In conclusion, I request that the court either
(1) Implements my 'school choice' suggestion above, or
(2) Accepts the concept proposed by RedHat et al, or
(3) Settles but prohibits Microsoft from school donations

Sincerely,

Alexander Perry.

PS. This comment is submitted as a personal opinion, and I am neither requested nor authorized to represent my employer.

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